intend to keep the land, for himself and did not have to rely on those representations. He was gullible and admitted to be profit-motivated.

Lastly and in the alternative, the plaintiff sought to avoid the contract on mistake or non disclosure of material facts. The defect which the plaintiff seeks to rely here is a patent defect of quality of the land he purchased. Patent defects are such as are discoverable by inspection and ordinary vigilance on the part of the purchaser and to quote *Halsbury's* Laws of England 3rd Ed. Vol. 34 page 212:

"the rule is caveat emptor; a purchaser should make inspection and inquiry as to that which he is proposing to buy. If he omits to ascertain whether the land is such as he desires to acquire, he cannot complain afterwards on discovering defects of which he would have been aware if he had taken ordinary steps to ascertain its physical condition; and, although as a general rule a vendor must deliver property corresponding to the description contained in the contract, yet an error in the particulars or description of the property in the contract is not a ground of objection if it is readily corrected on inspection."

It is very obvious in the present case that the plaintiff had chosen not to inspect the land before executing the transfer with the 1st defendant in view of his other considerations in making a quick profit and in this regard he cannot now complain on discovering the defects after his venture with Mr. Siew has failed.

In *Svanosio* v. *McNamara & Anor.*[3] it was said that:

"It may be possible in exceptional cases to obtain relief on the ground of common mistake after a contract for the sale of land has been completed. But the cases must be very rare. They are unlikely to go beyond cases where there has been a total failure of consideration."

In my judgment, this is not one of those rare cases where mistake can be pleaded successfully and certainly there has been no failure of consideration here. The plaintiff's claim must necessarily fail and is therefore dismissed.

Based on the same facts, the 1st defendant's counter-claim should succeed and it is ordered that the transfer of the house and land described as lot 1629 block 195 Kuching North Land District be effected in favour of the 1st defendant. There is no evidence advanced on purported damages sustained by the 1st defendant as house rent for the period claimed and in this event the prayers at paragraph (b) and (c) of the counter-claim fail.

The defendants will have the costs of this action.

Claim dismissed.

Solicitors: *Yong & Co.; Ee, Lim & Lin.*

Re MAT SHAH; *Ex Parte* RAGHBIR SINGH

[O.C.J. (Ajaib Singh J.) December 1, 1979]
[Seremban — In Bankruptcy No. 104 of 1978]

Bankruptcy — Calculation of interest not exceeding 8% — When moneylender can receive interest exceeding 8% — Moneylenders Ordinance 1951, s. 20(1) — Moneylenders Act 1927 (U.K.), s. 9(1) — Bankruptcy Act 1967, s. 5.

Moneylending — Scope of s. 20(1) of Moneylenders Ordinance 1951.

Bankruptcy Law — Bankruptcy petition and bankruptcy notice distinguished — Different interest rates chargeable.

The moneylender in the present case had obtained judgment against the debtor for $1,500 plus interest at 18% per annum and costs making a total of over $2,000. His bankruptcy notice which he subsequently served upon the debtor went unheeded. He then presented a bankruptcy petition against the debtor claiming the debt due to him with interest at 18% per annum which had been allowed to him in the judgment debt.

Held, dismissing the bankruptcy petition: (1) the calculation of interests at 18% was illegal for it contravened the provisions of section 20(1) of the Moneylenders Ordinance; if the interest had been calculated at the authorised rate of not more than 8% per annum then the total debt due to the moneylender would have been a little less than the minimum sum of $2,000 required to base a bankruptcy petition under the Bankruptcy Act 1967, section 5;

(2) a bankruptcy notice which a creditor may serve on a debtor under the Bankruptcy Act is not restricted as a bankruptcy petition is under section 20(1) of the Moneylenders Ordinance and section 5 of the Bankruptcy Act;

(3) although a moneylender is not allowed to calculate interest at more than 8% in his bankruptcy petition he has nevertheless the right to receive interest over and above the 8% to which he may be entitled but only after all the debts proved in the debtor's estate have been paid in full. This is so by virtue of the Moneylenders Ordinance, section 20(1).

Cases referred to:-

(1) *In re A Debtor* [1930] 2 Ch. 239.

(2) *In re A Debtor* [1937] Ch. 181.

CIVIL SUIT.

Gurdial Bakan Singh for the Judgment Creditor.

Cur. Adv. Vult.

Ajaib Singh J.: When a moneylender presents a bankruptcy petition against a debtor the interest on the debt due to him and which may be included in the petition is to be calculated at an annual rate not exceeding eight per cent by virtue of section 20(1) of the Moneylenders Ordinance 1951 which reads as follows: —

"Where a debt due to a moneylender in respect of a loan made by him after the commencement of this Ordinance includes interest, that interest shall, for the purposes of the provisions of the Bankruptcy Enactment of the Federated Malay States or any corresponding law in force in any other State relating to the presentation of a bankruptcy petition, voting at meetings, compositions and schemes of arrangement and dividend, be calculated at a rate not exceeding eight per centum per annum, but nothing in the foregoing provision shall prejudice the right of the creditor to receive out of the estate, after all the debts proved in the estate have been paid in full, any higher rate of interest to which he may be entitled."

In the present case the moneylender had obtained judgment against the debtor for the sum of $1,500 plus interest at the rate of eighteen per centum per annum and costs making a total of a little over $2,000. His bankruptcy notice which he subsequently served upon the debtor went unheeded. He then presented

a bankruptcy petition against the debtor wherein he set out the particulars of the debt due to him with interest calculated at eighteen per cent which had been allowed to him in the judgment debt. The calculation of interest at eighteen per cent was illegal for it contravened the provisions of section 20(1) of the Moneylenders Ordinance. If the interest had been calculated at the authorised rate of not more than eight per cent per annum the total debt due to the moneylender would have been a little less than the minimum sum of $2,000 required to base a bankruptcy petition under section 5 of the Bankruptcy Act 1967. In the circumstances therefore I had no alternative but to dismiss the bankruptcy petition.

A bankruptcy notice which a creditor may serve on a debtor under the Bankruptcy Act is not restricted as a bankruptcy petition is under the aforesaid section 20(1) of the Moneylenders Ordinance and section 5 of the Bankruptcy Act. A bankruptcy notice can be based on a judgment debt for any amount and interest calculated thereon may exceed eight per cent. In the case of *In re A Debtor*[1] it was held in effect that section 9(1) of the Moneylenders Act 1927 (which is *in pari materia* to our section 20(1) of the Moneylenders Ordinance except as to the amount of the rate of interest) did not prevent a moneylender who had obtained judgment for a debt which included interest at a rate exceeding five per cent per annum from serving a bankruptcy notice upon the debtor requiring payment of the judgment debt.

Although a moneylender is not allowed to calculate interest at more than eight per cent per annum in his bankruptcy petition he has nevertheless the right to receive interest over and above the eight per cent to which he may be entitled but only after all the debts proved in the debtor's estate have been paid in full. This is so by virtue of section 20(1) of the Moneylenders Ordinance itself which states that

> "... nothing in the foregoing provision shall prejudice the right of the creditor to receive out of the estate, after all the debts proved in the estate have been paid in full, any higher rate of interest to which he may be entitled."

Dealing with a somewhat similar point Greene L.J. in the case of *In re A Debtor*[2] said —

> "Section 9(1) of the Moneylenders Act 1927 does not destroy the excess interest for the purpose of the bankruptcy law; it leaves it as a real debt provable in bankruptcy and payable in bankruptcy, but, for certain limited and specific purposes, it is to be ignored or postponed. It is to be ignored, for instance, in computing the fifty pounds which is the minimum on which the petition can be based. It is to be postponed in the matter of payment until all the other debts have been paid in full. It is not postponed in the matter of proof, and in the end it will get paid if there are sufficient assets. Therefore it seems to me that, on the face of the sub-section, the Legislature is quite clearly preserving to the moneylender the right by means of the bankruptcy procedure to obtain the payment of that excess interest in addition to the payment of the principal and interest at the rate of 5 per cent."

Order accordingly.

Solicitors: *Gurdial Bakan Singh.*